

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, ) CASE NO: 8:04CR64

Plaintiff, )

vs. )

RUSSELL J. FRAUENDORFER, )

Defendant. )

**MEMORANDUM AND ORDER**

This matter is before the court for initial review of the defendant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, Filing No. 91. Under the *Rules Governing Section 2255 Proceedings for the United States District Courts* ("§ 2255 Rules"), a defendant's § 2255 motion is subject to initial review by the court:

If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

§ 2255 Rule 4(b).

The defendant was convicted after a jury trial of conspiring to commit armed robbery, armed bank robbery and using a weapon in connection with a robbery. Filing No. 56. His conviction and sentence were affirmed on appeal. Filing No. 84. In his § 2255 motion and brief, the defendant alleges that he received ineffective assistance of counsel in his counsel's failure to object to certain testimony and evidence and asserts that the admission of an affidavit violated principles announced in *Crawford v. Washington*, 541

U.S. 36 (2004).

It does not plainly appear from the motion and the record of prior proceedings that the defendant is not entitled to relief. Accordingly, the court finds that the United States should file an answer, motion, or other response, together with a supporting brief.

THEREFORE, IT IS ORDERED:

1. The United States shall file an answer, motion, or other response to the defendant's § 2255 motion within 30 days from the date of this order;
2. The defendant may file a reply within 30 days thereafter.

DATED this 21st day of September, 2007.

BY THE COURT:

s/Joseph F. Bataillon  
JOSEPH F. BATAILLON  
United States District Judge